

1 C. YONG JEONG, ESQ. (SBN 255244)
jeong@jeonglikens.com
2 AMY CHOE, ESQ. (SBN 299870)
3 amy.choe@jeonglikens.com
JEONG & LIKENS, L.C.
4 1055 W. 7TH Street, Suite 2280
5 Los Angeles, California 90017
6 Tel. 213-688-2001
Fax. 213-688-2002

7
8 Attorneys for Plaintiff, KILINA AMERICA, INC.

9
10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13
14

15 KILINA AMERICA INC., a California
Corporation;

16 Plaintiff,

17 vs.
18

19 BLOSSOM INC., a California
corporation; MYUNG HEE PARK, an
individual; and DOES 1-10, inclusive,
20

21 Defendants.

Case Number: 2:17-cv-4580

PLAINTIFF'S COMPLAINT FOR:

- 1. COPYRIGHT INFRINGEMENT**
2. VICARIOUS COPYRIGHT
INFRINGEMENT
3. CONTRIBUTORY COPYRIGHT
INFRINGEMENT

Jury Trial Demanded

22
23 Plaintiff KILINA AMERICA, INC. ("Plaintiff" or "KILINA") by and through its
24 undersigned attorneys, hereby prays to this honorable Court for relief and remedy
25 based on the following:
26
27
28

INTRODUCTION

Plaintiff is a California-based company engaged in the apparel industry as a textile converter of imported and domestic fabrications. Plaintiff creates, or purchases and obtains, exclusive rights to unique two-dimensional graphic artworks for use on textiles and garments, and those textiles and garments are transacted primarily in the fashion industry. Plaintiff owns these designs in exclusivity and makes sales of products bearing these designs for profit. Plaintiff's business is predicated on its ownership of these designs and it spends a considerable amount of time and resources creating and obtaining top-quality, marketable and aesthetically-appealing designs. Customers of Plaintiff, including possibly DOE defendants named herein, take design samples with the understanding and agreement that they will only utilize Plaintiff to reproduce said designs should they wish to do so, and will not seek to make minor changes to Plaintiff's proprietary work to reproduce the same elsewhere, yet use those designs in furtherance of their business in violation of both their contractual agreement with Plaintiff and Plaintiff's copyrights. No other party is authorized to make sales of product bearing Plaintiff's proprietary designs without express permission from Plaintiff. This action is brought to recover damages for direct, vicarious and contributory copyright infringement arising out of the misappropriation of Plaintiff's exclusive designs by the Defendants, and each of them.

JURISDICTION AND VENUE

1. This action arises under the Copyright Act of 1976, Title 17 U.S.C. § 101 *et seq.*
2. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331, 1338(a) and (b).
3. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(c) and 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred.

PARTIES

4. KILINA AMERICA, INC. (“Plaintiff”) is a corporation organized and existing under the laws of the State of California with its principal place of business in the County of Los Angeles, at 1368 E. Washington Blvd., Los Angeles, CA 90021.

5. Plaintiff is informed and believes and thereon alleges that Defendant BLOSSOM, INC. (“BLOSSOM”), is, and at all times herein mentioned was, a corporation organized and existing under the laws of California and doing business in California, with its principal place of business at 1301 W. 2nd Street Ste. 203, Los Angeles CA 90026.

6. Plaintiff is informed and believes and thereon alleges that Defendant MYUNG HEE PARK (“PARK”) is, and at all times herein mentioned was, an individual residing in Los Angeles, California. Plaintiff is informed and believes and thereon alleges that Defendant PARK is, and at all times herein mentioned was, the owner and principal of BLOSSOM with its principal place of business at 1301 W. 2nd Street Ste. 203, Los Angeles CA 90026.

7. Named Defendants, and Does 1-10, may be collectively referred to as “Defendants.”

8. Plaintiff is informed and believes and thereon alleges that some of Defendants Does 1 through 3, inclusive, are manufacturers and/or vendors of garments to Defendant, which DOE Defendants have manufactured and/or supplied and are manufacturing and/or supplying garments comprised of fabric printed with Plaintiff’s copyrighted design(s) (as hereinafter defined) without Plaintiff’s knowledge or consent or have contributed to said infringement. The true names, whether corporate, individual or otherwise, and capacities of defendants sued herein as Does 1 through 3 are presently unknown to Plaintiff at this time, and therefore, Plaintiff sues said defendants by such fictitious names. Plaintiff will seek leave to amend this complaint to allege their true names and capacities

1 when the same have been ascertained. Plaintiff is informed and believes, and
 2 based thereon alleges, that each of defendants designated as a DOE is
 3 responsible in some manner for the events alleged herein and the damages
 4 caused thereby.

5 9. Defendants DOES 4 through 10, inclusive, are other parties not yet identified
 6 who have infringed Plaintiff's copyrights, have contributed to the infringement
 7 of Plaintiff's copyrights, or have engaged in one or more of the wrongful
 8 practices alleged herein. The true names, whether corporate, individual or
 9 otherwise, and capacities of defendants sued herein as Does 4 through 10 are
 10 presently unknown to Plaintiff at this time, and therefore, Plaintiff sues said
 11 defendants by such fictitious names. Plaintiff will seek leave to amend this
 12 complaint to allege their true names and capacities when the same have been
 13 ascertained.

14 10. Plaintiff is informed and believes and thereupon alleges that at all times
 15 relevant hereto each of Defendants acted in concert with each other, was the
 16 agent, affiliate, officer, director, manager, principal, alter-ego, and/or employee
 17 of the remaining defendants and was at all times acting within the scope of such
 18 agency, affiliation, alter-ego relationship and/or employment; and actively
 19 participated in or subsequently ratified and adopted, or both, each and all of the
 20 acts or conducts alleged, with full knowledge of all the facts and circumstances,
 21 including without limitation to full knowledge of each and every wrongful
 22 conducts and Plaintiff's damages caused therefrom.

23 **CLAIMS RELATED TO DESIGN**

24 11. Plaintiff is the owner and author of a two-dimensional artwork called MS-1391-
 25 1 ("Subject Design"). (Exhibit A).

26 12. Plaintiff applied for a copyright from the United States Copyright Office for the
 27 Subject Design and was granted Registration VAu 1-258-584 effective on July
 28 8, 2016. (Exhibit B).

1 13.Plaintiff formatted the Subject Design for use on textiles, sampled the Subject
2 Design, and negotiated sales of fabric bearing the Subject Design.

3 14.Plaintiff is informed and believes and thereon alleges that Defendants, each of
4 them, had access to the Subject Designs, including without limitation, through:
5 (a) access to Plaintiff's showroom and/or design library; (b) access to illegally
6 distributed copies of the Subject Designs by third-party vendors and/or DOE
7 Defendants, including without limitation international and/or overseas
8 converters and printing mills; (c) access to Plaintiff's strike-offs and samples;
9 and (d) access to garments in the marketplace manufactured with lawfully
10 printed fabric bearing the Subject Designs.

11 15.Plaintiff is informed and believes and thereon alleges that, without Plaintiff's
12 authorization, Defendant BLOSSOM purchased, sold, marketed, advertised,
13 manufactured, caused to be manufactured, imported and/or distributed fabric
14 and/or garments comprised of fabric featuring a design which is identical, or
15 substantially similar to, the Subject Design. A true and correct copy of such a
16 garment is attached hereto as Exhibit C. Said garments include but are not
17 limited to garments sold by BLOSSOM bearing the label "Papaya" under RN
18 153470.

19 16.At various times Defendant BLOSSOM owned and controlled offline and/or
20 online retail stores, and each, Plaintiff's investigation revealed that garments
21 comprised of fabric bearing the Subject Design were being offered for sale,
22 garments which were manufactured and/or imported under the direction of the
23 Defendants, and each of them.

24 17.Plaintiff is informed and believes and thereon alleges that, without Plaintiff's
25 authorization, Defendant PARK purchased, sold, marketed, advertised,
26 manufactured, caused to be manufactured, imported and/or distributed fabric
27 and/or garments comprised of fabric featuring a design which is identical, or
28 substantially similar to, the Subject Design. A true and correct copy of such a

1 garment is attached hereto as Exhibit C. Said garments include but are not
2 limited to garments sold by PARK bearing the label "Papaya" under RN
3 153470.

4 18. At various times Defendant PARK owned and controlled offline and/or online
5 retail stores, and each, Plaintiff's investigation revealed that garments
6 comprised of fabric bearing the Subject Design were being offered for sale,
7 garments which were manufactured and/or imported under the direction of the
8 Defendants, and each of them.

9 19. None of the aforementioned transactions were authorized by Plaintiff, and all
10 were in violation of Plaintiff's intellectual property rights.

11
12 **FIRST CLAIM FOR RELIEF**

13 (For Copyright Infringement – Against all Defendants, and Each)

14 20. Plaintiff repeats, re-alleges and incorporates herein by reference as though fully
15 set forth the allegations contained in Paragraphs 1 through 19, inclusive, of this
16 Complaint.

17 21. Plaintiff is informed and believes and thereon alleges that Defendants, and each
18 of them, accessed the Subject Design through, without limitation, the following:
19 (a) access to Plaintiff's design library; (b) access to authorized or unauthorized
20 reproductions in the possession of other vendors and/or DOE Defendants; and
21 (c) access to Plaintiff's strike-offs, swatches, paper CADs and samples.

22 22. Plaintiff is informed and believes and thereon alleges that Defendants, and each
23 of them, infringed Plaintiff's copyright by importing, creating, marketing,
24 advertising, making, and/or developing directly infringing and/or derivative
25 works from the Subject Design and by importing, producing, distributing and/or
26 selling infringing garments through a nationwide network of retail stores,
27 catalogues, and online websites.

1 23. Due to Defendants' acts of infringement, Plaintiff has suffered substantial
2 damages to its business in an amount to be established at trial.

3 24. Due to Defendants' acts of infringement, Plaintiff has suffered general and
4 special damages to its business in an amount to be established at trial.

5 25. Due to Defendants' acts of copyright infringement as alleged herein,
6 Defendants, and each of them, have obtained direct and indirect profits they
7 would not otherwise have realized but for their infringement of the Subject
8 Design. As such, Plaintiff is entitled to disgorgement of Defendants' profits
9 directly and indirectly attributable to Defendants' infringement of the Subject
10 Design in an amount to be established at trial.

11 26. Plaintiff is informed and believes and thereon alleges that Defendants, and each
12 of them, have committed acts of infringement alleged herein with actual or
13 constructive knowledge of Plaintiff's rights such that Plaintiff is entitled to a
14 finding of willful infringement.

15
16 **SECOND CLAIM FOR RELIEF**

17 (For Vicarious and/or Contributory Copyright Infringement – Against All
18 Defendants)

19 27. Plaintiff repeats, re-alleges and incorporates herein by reference as though fully
20 set forth the allegations contained in Paragraphs 1 through 19, inclusive, of this
21 Complaint.

22 28. Plaintiff is informed and believes and thereon alleges that Defendants, and each
23 of them, knowingly induced, participated in, aided and abetted in and
24 resultantly profited from the illegal reproduction, importation, purchase,
25 marketing, advertisement, distribution and/or sales of product featuring the
26 Subject Design as alleged herein above.

27 29. Plaintiff is informed and believes and thereon alleges that Defendants, and each
28 of them, are vicariously liable for the infringement alleged herein because they

1 had the right and ability to supervise the infringing conduct and because they
2 had a direct financial interest in the infringing product.

3 30.By reason of the Defendants', and each of their, acts of contributory and/or
4 vicarious infringement as alleged above, Plaintiff has suffered and will continue
5 to suffer substantial damages to its business in an amount to be established at
6 trial, as well as additional general and special damages in an amount to be
7 established at trial.

8 31.Due to Defendants' acts of contributory and/or vicarious copyright infringement
9 as alleged herein, Defendants, and each of them, have obtained direct and
10 indirect profits they would have not otherwise realized bur for their
11 infringement of the Subject Design. As such, Plaintiff is entitled to
12 disgorgement of Defendants' profits directly and indirectly attributable to
13 Defendants' infringement of the Subject Design, an amount to be established at
14 trial.

15 32.Plaintiff is informed and believes and thereon alleges that Defendants, and each
16 of them, have committed acts of infringement alleged herein with actual or
17 constructive knowledge of Plaintiff's rights such that Plaintiff is entitled to a
18 finding of willful infringement.

19
20 **THIRD CLAIM FOR RELIEF**

21 (Contributory Copyright Infringement– Against All Defendants)

22 33.Plaintiff repeats, re-alleges and incorporates herein by reference as though fully
23 set forth the allegations contained hereforeto, inclusive, of this Complaint.

24 34.Plaintiff is informed and believes and thereon alleges that Defendants, and each
25 of them, knowingly induced, caused, materially contributed to, participated in,
26 encourages, aided and abetted in and resultantly profited from the illegal
27 reproduction, importation, purchase, marketing, advertising, distribution and/or
28 sales of product featuring the Subject Design as alleged herein above.

1 35. By reason of the Defendants', and each of their, acts of contributory copyright
2 infringement as alleged above, Plaintiff has suffered and will continue to suffer
3 substantial damages to its business in an amount to be established at trial, as well
4 as additional general and special damages in an amount to be established at
5 trial.

6 36. Due to Defendants' acts of contributory copyright infringement as alleged
7 herein, Defendants, and each of them, have obtained direct and indirect profits
8 they would have not otherwise realized but for their infringement of the Subject
9 Design. As such, Plaintiff is entitled to disgorgement of Defendants' profits
10 directly and indirectly attributable to Defendants' infringement of the Subject
11 Design, an amount to be established at trial.

12 37. Plaintiff is informed and believes and thereon alleges that Defendants, and each
13 of them, have committed acts of infringement alleged herein with actual or
14 constructive knowledge of Plaintiff's rights such that Plaintiff is entitled to a
15 finding of willful infringement.

16
17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for judgment against all Defendants as follows:

19
20 **Against All Defendants**

21 With respect to Each Claim for Relief:

- 22 1. That Defendants, their agents and servants be enjoined from infringing
23 Plaintiff's copyrights in any manner;
24 2. That Plaintiff be awarded all profits of Defendants plus all losses of Plaintiff,
25 the exact sum to be proven at time of trial, or, if elected before final judgment,
26 statutory damages as available under the Copyright Act, 17 U.S.C. § 101 *et*
27 *seq.*;
28 3. That Plaintiff be awarded its attorneys' fees as available under the Copyright

1 Act, 17 U.S.C. § 101 *et seq.*;

2 4. That Plaintiff be awarded pre-judgment interest as allowed by law;

3 5. That Plaintiff be awarded costs of litigation; and

4 6. That Plaintiff be awarded such further legal and equitable relief as the Court
5 deems proper.

6
7 **DEMAND FOR TRIAL BY JURY**

8 Plaintiff hereby demands a trial by jury in this action pursuant to Federal Rule of
9 Civil Procedure 38 and the Seventh Amendment of the Constitution.

10
11 Dated: June 21, 2017

12
13 Respectfully submitted,

14
15
16 /s/C. Yong Jeong
17 C. Yong Jeong, Esq.
18 Amy Choe, Esq.
19 Attorneys for Plaintiff
20
21
22
23
24
25
26
27
28